

**ASSEMBLY BILL**

**No. 421**

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**Introduced by Assembly Member Smyth**

February 14, 2011

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An act to amend Sections 6603 and 6604 of, and to add Section 6609.4 to, the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

AB 421, as introduced, Smyth. Mental health: sexually violent predators: civil commitment proceedings.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a prisoner for evaluation by the State Department of Mental Health when he or she determines that the person may be a sexually violent predator and specifies the judicial processes necessary for civil commitment as a sexually violent predator, including, but not limited to, the right to a jury trial.

Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, requires an indeterminate civil commitment for persons who have been determined to be sexually violent predators, requires the Department of Mental Health to file an annual report for a person who has been civilly committed as a sexually violent predator, and sets forth who may receive copies of the report. Proposition 83 permits the Legislature to amend the initiative, either by a  $\frac{2}{3}$  vote of the membership of each house, or by majority vote of the membership of each house if the amendments expand the scope of the application

of the provisions of the proposition or increase the punishments or penalties provided in the proposition.

This bill would allow each side in the jury trial to use 10 peremptory challenges in selecting the jury. The bill would give the county's designated attorney in related proceedings access to all records concerning the person that is the subject of the proceeding, without the necessity of a court order. The bill would make findings regarding the necessity for indeterminate terms for sexually violent predator civil commitment.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6603 of the Welfare and Institutions Code  
2     is amended to read:

3     6603. (a) A person subject to this article shall be entitled to a  
4     trial by jury, to the assistance of counsel, to the right to retain  
5     experts or professional persons to perform an examination on his  
6     or her behalf, and to have access to all relevant medical and  
7     psychological records and reports. In the case of a person who is  
8     indigent, the court shall appoint counsel to assist him or her, and,  
9     upon the person's request, assist the person in obtaining an expert  
10    or professional person to perform an examination or participate in  
11    the trial on the person's behalf. Any right that may exist under this  
12    section to request DNA testing on prior cases shall be made in  
13    conformity with Section 1405 of the Penal Code.

14    (b) The attorney petitioning for commitment under this article  
15    shall have the right to demand that the trial be before a jury.

16    (c) (1) If the attorney petitioning for commitment under this  
17    article determines that updated evaluations are necessary in order  
18    to properly present the case for commitment, the attorney may  
19    request the State Department of Mental Health to perform updated  
20    evaluations. If one or more of the original evaluators is no longer  
21    available to testify for the petitioner in court proceedings, the  
22    attorney petitioning for commitment under this article may request  
23    the State Department of Mental Health to perform replacement  
24    evaluations. When a request is made for updated or replacement  
25    evaluations, the State Department of Mental Health shall perform  
26    the requested evaluations and forward them to the petitioning

1 attorney and to the counsel for the person subject to this article.  
2 However, updated or replacement evaluations shall not be  
3 performed except as necessary to update one or more of the original  
4 evaluations or to replace the evaluation of an evaluator who is no  
5 longer available to testify for the petitioner in court proceedings.  
6 These updated or replacement evaluations shall include review of  
7 available medical and psychological records, including treatment  
8 records, consultation with current treating clinicians, and interviews  
9 of the person being evaluated, either voluntarily or by court order.  
10 If an updated or replacement evaluation results in a split opinion  
11 as to whether the person subject to this article meets the criteria  
12 for commitment, the State Department of Mental Health shall  
13 conduct two additional evaluations in accordance with subdivision  
14 (f) of Section 6601.

15 (2) For purposes of this subdivision, “no longer available to  
16 testify for the petitioner in court proceedings” means that the  
17 evaluator is no longer authorized by the Director of Mental Health  
18 to perform evaluations regarding sexually violent predators as a  
19 result of any of the following:

20 (A) The evaluator has failed to adhere to the protocol of the  
21 State Department of Mental Health.

22 (B) The evaluator’s license has been suspended or revoked.

23 (C) The evaluator is unavailable pursuant to Section 240 of the  
24 Evidence Code.

25 (d) Nothing in this section shall prevent the defense from  
26 presenting otherwise relevant and admissible evidence.

27 (e) If the person subject to this article or the petitioning attorney  
28 does not demand a jury trial, the trial shall be before the court  
29 without a jury.

30 (f) A unanimous verdict shall be required in any jury trial.

31 (g) The court shall notify the State Department of Mental Health  
32 of the outcome of the trial by forwarding to the department a copy  
33 of the minute order of the court within 72 hours of the decision.

34 (h) Nothing in this section shall limit any legal or equitable right  
35 that a person may have to request DNA testing.

36 (i) *In a jury trial pursuant to this section, each side shall have*  
37 *the use of 10 peremptory challenges in selecting the jury.*

38 SEC. 2. Section 6604 of the Welfare and Institutions Code is  
39 amended to read:

1     6604. (a) The court or jury shall determine whether, beyond  
2 a reasonable doubt, the person is a sexually violent predator. If the  
3 court or jury is not satisfied beyond a reasonable doubt that the  
4 person is a sexually violent predator, the court shall direct that the  
5 person be released at the conclusion of the term for which he or  
6 she was initially sentenced, or that the person be unconditionally  
7 released at the end of parole, whichever is applicable. If the court  
8 or jury determines that the person is a sexually violent predator,  
9 the person shall be committed for an indeterminate term to the  
10 custody of the State Department of Mental Health for appropriate  
11 treatment and confinement in a secure facility designated by the  
12 Director of Mental Health. The facility shall be located on the  
13 grounds of an institution under the jurisdiction of the Department  
14 of Corrections *and Rehabilitation*.

15     (b) *An indeterminate term is necessary to address these*  
16 *offenders' particular risk of reoffending, in that the prognosis for*  
17 *curing sexually violent predators is poor, the treatment needs of*  
18 *this population are very long term, and the treatment modalities*  
19 *for this population are very different than the traditional treatment*  
20 *modalities under Article 4 (commencing with Section 2960) of*  
21 *Chapter 7 of Title 1 of Part 3 of the Penal Code and the*  
22 *Lanterman-Petris-Short Act (Chapter 1 (commencing with Section*  
23 *5000) of Part 1 of Division 5 of this code and for persons pleading*  
24 *not guilty by reason of insanity, as provided for in Sections 1026*  
25 *to 1027, inclusive, of the Penal Code.*

26     SEC. 3. Section 6609.4 is added to the Welfare and Institutions  
27 Code, to read:

28     6609.4. Notwithstanding other provisions of law, for purposes  
29 of the proceedings required in Sections 6601, 6603, 6605, and  
30 6608, the attorney designated pursuant to subdivision (i) of Section  
31 6601 shall have access to all records concerning the person that is  
32 the subject of these proceedings upon written request to the agency  
33 or institution having custody, control, or possession of the records,  
34 without the necessity of a court order.